

# Historic Districts: Concerns and Comments

The following concerns often are heard when historic districts are proposed; they represent the most common points of opposition. These concerns are especially heard when the designation of commercial buildings is proposed, since it is feared that designation will deny owners the right to profit from their investment. The following replies represent reasonable responses to these concerns.

**CONCERN:** *"Designation will add another level of bureaucracy to the city's approval process."*

**REPLY:** When changes or additions are proposed to designated buildings, the review process of the historic district commission should be expeditious, predictable, and integrated into the normal review of other city agencies. Approval or disapproval by the commission should be completed expeditiously (e.g., it should take no more than 60 to 90 days from the time the petition is submitted). The determination should be given in writing, and if the proposal is not approved the reasons for disapproval should be given. As owners become accustomed to this procedure it should proceed quickly, taking no longer than other approvals.

**CONCERN:** *"Designation will cause an unnecessary hardship to property owners."*

**REPLY:** The act of designation should not cause economic hardship. As a court found in a Virginia case, the identification of an area as a historic district did not deprive the owners of any of their property rights. Designation should be based solely on historical or architectural significance, and not based on economic impact. However, historic preservation has been shown in many communities to help create economic revitalization. In residential areas, property values do not fall after such designation, but stabilize, since designation implies more neighborhood stability and renewal. In commercial areas, designation has led to many new programs and revitalization proposals that have created a fresh image and new vitality for businesses. If an economic hardship arises through inequitable property taxes or other regulations, it can be remedied by incentive programs described elsewhere. Owners who feel they have been unfairly penalized may typically appeal to the mayor, city council, or an appeals board.

**CONCERN:** *"Designation means I can't change or add on to my building."*

**REPLY:** This is probably the most misunderstood and surprising concern, for most ordinances will permit alterations and additions. Indeed, it would be foolish not to permit changes, for it would doom historic properties to the inevitable role of museum pieces if they were not allowed to be updated.

Alterations and additions should be permitted if two conditions are met. First, the changes should not destroy the elements that give a property its historic integrity. For example, if the front facade is important as part of a district's streetscape, then an addition should be allowed at the rear. If the entire exterior is historically significant, then change can be made to the interior, and an addition should be permitted if it complements the original structure. The guidelines for making such changes are described in the Secretary of the Interior's Standards and Guidelines for Historic Rehabilitation.

Second, alterations or additions should be subject



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to the review and approval of a historic district commission or design review board. This ensures that the standards are interpreted appropriately and consistently.

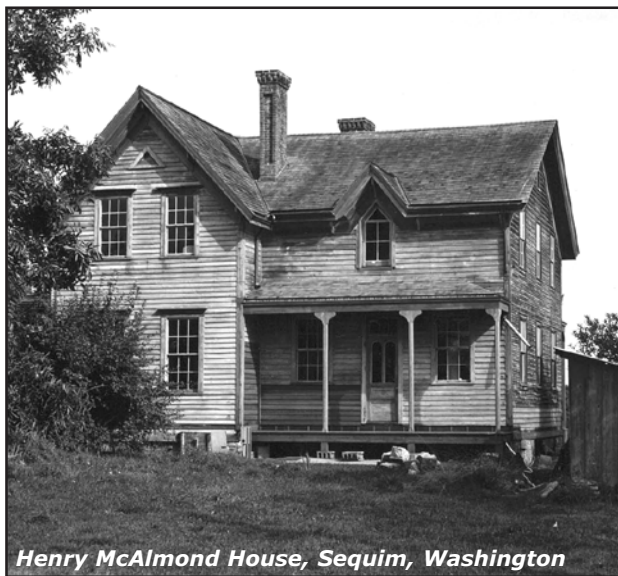
**CONCERN:** *"Designation should be voluntary rather than mandatory."*

**REPLY:** At first, this would seem to be a valid point. Shouldn't ordinances allow for voluntary designation, for this would make the ordinance acceptable to property owners. Such an ordinance,

however, would be inherently weak from a preservation viewpoint, for it gives owners the right to determine whether or not their buildings are historically significant. Owners may not be the best people to make this judgment. Some owners may want to give high status to their property when its significance may be relatively insignificant, while other owners may fear the restrictions that accompany designation, and may insist that their important historic property not receive any form of designation. It is important to recognize that a historic building is historic whether or not its owner recognizes it as such. Such determination should be made by a qualified panel of experts; consistency to the designation process is important because historic buildings have no protection against demolition or destructive alterations in any other way but through local designation and through the provisions of a local ordinance.

**CONCERN:** *"It is unfair to give my building designation, for there is no firm criteria for selection. The list of proposed buildings can be seen as arbitrary, and based on subjective judgments only."*

**REPLY:** The selection of properties to be designated and subject to the regulations of a local ordinance should be made by an impartial panel of individuals who are knowledgeable about local history and architectural history and styles. Serving on such a selection committee is no easy task, for the merits



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of individual structures can be argued from many perspectives, and sometimes only through much debate and reconsideration. A consensus will eventually form, however, and the reasons for

inclusion or exclusion of structures should be presented as part of a final list.

Although selection is to some degree subjective, as it must be, legal precedents have established that such a process has legal standing as long as (1) the selection decisions were made by qualified people and (2) they had established selection criteria beforehand. The selection criteria need not rely on cold, statistical logic, but can be "soft," for there is no consistent way to apply complete objectivity when it comes to questions of historical importance. Courts have generally upheld the legality of such selections, and have been unwilling to substitute their judgment for that of the selection committee. As discussed previously, criteria for selection is ultimately based on two factors, historical significance and architectural significance. Other criteria that is more specific may be added. They may include such factors as age; number of buildings of a certain type extant in the community; listing on local, state or federal registers; association with important local events; examples of fine craftsmanship, etc.

**CONCERN:** *"This ordinance has no sound legal basis and will be subject to lawsuits."*

**REPLY:** Any ordinance designating and regulating historic buildings should be legally well-founded. There are many legal precedents that justify the right of local governments to establish preservation ordinances. An ordinance should also be subjected to the scrutiny of legal counsel, whether it be the city attorney or private counsel, for it is a document with many legal, as well as economic, ramifications, and may be subjected to challenge by a disgruntled owner.

With such a basis in law there is little reason to be concerned about the right to designate historic structures through local ordinance. Over the past two decades the right of local jurisdictions to designate historic districts has become as acceptable a practice as the creation of zoning ordinances, which were earlier subjected to similar scrutiny and challenge.

Nevertheless, owners cannot be denied use of their property without due process of law. Therefore, if a structure is to be designated two steps should be included in the process—the owner should first be given adequate notice of the contemplated action (30 to 60 day notice by registered mail is typical) and second, be notified and given a chance to speak at a public hearing.